

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
VS. ) CR 16-1011  
 )  
CAMRON PETE, JR., )  
 )  
Defendant. )

APPEARANCES:

ATTORNEY TIMOTHY LAWRENCE VAVRICEK, Assistant U.S. Attorney, 111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401, appeared on behalf of the United States.

ATTORNEY DENNIS EVAN McKELVIE, of the McKelvie Law Office, 810 Fifth Avenue, P.O. Box 213, Grinnell, Iowa 50112, appeared on behalf of the Defendant.

SENTENCING HEARING,

HELD BEFORE THE HON. LINDA R. READE,

on the 2nd day of November, 2016, at 111 Seventh Avenue S.E., Cedar Rapids, Iowa, commencing at 1:28 p.m., and reported by Patrice A. Murray, Certified Shorthand Reporter, using machine shorthand.

Transcript Ordered: 12/1/16  
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Patrice A. Murray, CSR, RPR, RMR, FCRR  
United States District Court  
111 Seventh Avenue S.E., Box 4  
Cedar Rapids, Iowa 52401-2101  
(319) 286-2338

INDEXEXHIBITS

O R

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1 (The following proceedings were held in open court.)

2 THE CLERK: In Criminal Matter 16-1011, United  
3 States of America versus Camron Andrew Pete, Jr., on for  
4 sentencing hearing. The United States Probation Office  
5 is represented by Patrick Korth by teleconference.

6 Counsel, please state your appearances.

7 MR. VAVRICEK: Tim Vavricek for the United  
8 States.

9 MR. McKELVIE: Dennis McKelvie for the  
10 defendant.

11 THE COURT: And Mr. Pete is personally present.

12 Mr. Pete, do you recall being in court on April 25,  
13 2016, and pleading guilty to Count 5 of the superseding  
14 indictment, charging you with being a prohibited person  
15 in possession of a firearm?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: The penalty for this offense can be  
18 a prison term as long as 10 years, followed by a  
19 supervised release term that could be as long as 3 years.  
20 Probation is an option. Were it granted, it would be 1  
21 to 5 years in duration. Your fine could be as much as  
22 \$250,000. There are victims of this offense, it's my  
23 understanding, and the government can correct me --

24 (Disturbance from the gallery.)

25 THE COURT: I'm sorry, that child is going to

1 have to go out.

2 The government can correct me, but it's my  
3 understanding that the victims have not submitted a  
4 victim impact statement or requested restitution, nor  
5 requested to speak here.

6 Special assessment, \$100.

7 Mr. Pete, do you remember your attorney going  
8 through these provisions with you prior to the time you  
9 appeared in court and gave your plea of guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand you are in court  
12 today for the purpose of being sentenced on your plea of  
13 guilty?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is your plea still guilty?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: The Court has received and read the  
18 presentence investigation report, Document 63, dated  
19 September 14, 2016. The parties have filed documents  
20 with the Court, sentencing memos and the like, some  
21 exhibits, and I'll let the attorneys speak to their  
22 exhibits at the appropriate time. Just prior to the  
23 hearing and based on an e-mail that both Mr. McKelvie and  
24 I received this morning, I did receive a disk, which now  
25 I think is Government Exhibit 3. I didn't have a chance

1 to watch it. It's my understanding that Agent Tim Hunt  
2 from ATF has been called to assist in the investigation  
3 of the shooting in Des Moines and is not able to be with  
4 us and that Mr. McKelvie has agreed that this disk can be  
5 played in his absence.

6 Is that so, Mr. McKelvie?

7 MR. McKELVIE: Yes, Your Honor.

8 THE COURT: All right. Other than what's in  
9 the official records of the court, the Court has no  
10 independent information concerning this case or Mr. Pete.

11 Mr. Vavricek, have you been through the presentence  
12 investigation report?

13 MR. VAVRICEK: Yes, Your Honor.

14 THE COURT: After so doing, any remaining  
15 objections from the government's point of view as to the  
16 scoring of the advisory guideline sentence?

17 MR. VAVRICEK: No, Your Honor.

18 THE COURT: Mr. McKelvie, have you and Mr. Pete  
19 been through the presentence investigation report?

20 MR. McKELVIE: Yes, Your Honor. When the draft  
21 report came out, I went to the Linn County Jail, reviewed  
22 that with Mr. Pete, left a copy with him for review. We  
23 made certain objections that I'll address in a second.  
24 When the final presentence report came out, I also took a  
25 copy over to him at the Linn County Jail and went through

1 that. As the Court notes from our sentencing memorandum  
2 and brief, we're objecting primarily to two things. One  
3 is the 6-level enhancement for possession of an extended  
4 magazine; and the second one is we're objecting to a  
5 4-point increase, stating that the underlying state  
6 conduct is essentially the same as the federal charge and  
7 that adding the increase would be in violation of the  
8 sentencing guidelines and not fair.

9 In that regard, Your Honor, I note that I made a  
10 mistake in the sentencing memorandum by arguing that the  
11 under -- that the federal charge was a person -- or a  
12 felon in possession of a firearm, instead of saying as a  
13 prohibited person. It's the same argument. I think it's  
14 a status crime, and, therefore, I don't think it affects  
15 the argument that I've made. So those are our  
16 objections, Your Honor.

17 THE COURT: All right.

18 MR. McKELVIE: And, Your Honor, I'm sorry,  
19 insofar as there's any suggestion that the Court can't  
20 make a finding based on the presentence report regarding  
21 the underlying facts of the case, we have no intention,  
22 and I've just discussed this with Mr. Pete, of creating  
23 any situation where the Court would find there's an  
24 obstruction of justice or any kind of impediment to the  
25 Court's decision-making process in this case factually.

1 I think once we present the exhibits here, the Court will  
2 be able to make a decision.

3 THE COURT: All right. With regard to the  
4 scoring of the 4 levels at Paragraph 22, possession of a  
5 firearm or ammunition in connection with another felony  
6 offense, the Probation Office has cited two underlying  
7 Iowa felonies, carrying weapons, a violation of Iowa Code  
8 Section 724.4, and going armed with intent, Iowa Code  
9 Section 708.8. Do you recognize the Eighth Circuit case  
10 of *United States versus Walker*, 771 F.3d 449, Eighth  
11 Circuit 2004, as being binding precedent on this Court  
12 for scoring the carrying weapons?

13 MR. McKELVIE: I believe I do, Your Honor.

14 THE COURT: All right. And then, in addition  
15 to that, and Mr. Vavricek may wish to talk about the  
16 elements of going armed with intent, but as far as I  
17 know, I'm not sure that there's any case directly on  
18 point, but we can talk about that.

19 Okay. So basically, it's -- the objection is to the  
20 base offense level, with defendant arguing that the  
21 20-level base offense level is not appropriate because  
22 the semiautomatic firearm was not capable of accepting a  
23 large capacity magazine. In terms of the plea that was  
24 taken, he was a prohibited person because he was a drug  
25 user, correct?

1 MR. VAVRICEK: Correct.

2 THE COURT: All right. I do think that does  
3 change fairly significantly the arguments as to Paragraph  
4 22, but I'll let the parties talk about that.

5 Mr. Pete, do you remember when Mr. McKelvie came  
6 over to the jail and talked to you about the presentence  
7 investigation report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you remember that he went  
10 through it paragraph by paragraph with you?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And he said he left a copy with  
13 you. Did you actually read that report?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And I see you do not have a high  
16 school education, nor do you have a GED. In spite of a  
17 formal education, are your reading skills such that you  
18 could actually read this report with your own eyes and  
19 understand what you were reading?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Then the issues are  
22 squared off. The government has the burden to prove the  
23 base offense level scoring at Paragraph 20 and the  
24 scoring at 22, possession in connection with another  
25 felony offense. I also think that the government has an



1 upward departure motion, and so we'll take that up at the  
2 appropriate time. It's my understanding that the *Davis*  
3 case is what is being relied on by Mr. McKelvie for the  
4 base offense level objection, and I've read that.

5 Mr. Vavricek, I'll accept any evidence or argument  
6 that you'd like to make on those two issues.

7 MR. VAVRICEK: Thank you, Your Honor. And I  
8 also would like to again thank Mr. McKelvie for his  
9 courtesies in this matter. I think -- we've talked about  
10 this -- the facts seem to be themselves undisputed, and I  
11 appreciate that we're able to just get to the point of  
12 the matter, and Your Honor can make Your Honor's ruling.

13 We have three exhibits. The first is the firearm  
14 with the magazine, so I would ask for permission to  
15 approach with that.

16 THE COURT: Yes.

17 (Mr. Vavricek approached the bench.)

18 MR. VAVRICEK: We would at this time move to  
19 admit Exhibit 1 and Exhibit 2, which we have an amended  
20 version filed yesterday. The only difference in the  
21 amendment from the original version is, at Mr. McKelvie's  
22 request, I added an e-mail that the DPS lab examiner had  
23 written some additional commentary. And then Exhibit 3  
24 is the video Your Honor mentioned, and I'd be happy to  
25 play that when Your Honor is ready.

1           THE COURT: All right. So if I understand the  
2 gist of this, in terms of the extended magazine, the  
3 first shot goes off without any problem, and the second  
4 shot would go off and subsequent shots but the trigger  
5 has to be manually reset in order for the subsequent  
6 shots to be fired.

7           MR. VAVRICEK: Correct. And what you'll -- I  
8 hope you'll be able to see on the video of Agent Hunt is,  
9 he's wearing these blue easy-to-see gloves, and he'll  
10 fire the first shot, and he uses his finger to push the  
11 trigger forward. You'll recall in the *Davis* case -- and  
12 I don't want to get too much into argument in this  
13 case -- but there was no trigger.

14          THE COURT: Right.

15          MR. VAVRICEK: Here, we have a trigger that  
16 just doesn't work quite right. But I think, Your Honor,  
17 the way it's in the box, the magazine is not in the gun,  
18 but it does, as the report states, fit right in there.

19          THE COURT: All right. Let's go ahead then,  
20 and -- any objection to the playing then of Exhibit 3?

21          MR. McKELVIE: No, Your Honor.

22          THE COURT: All right. And Exhibit 2 is  
23 received without objection, correct?

24          MR. McKELVIE: That is correct.

25          THE COURT: All right. And I have Exhibit 1,

1 and I'm looking at it. And I'll be returning it to  
2 Dubuque PD for safekeeping after this hearing.

3 (Whereupon, Exhibits 1, 2, and 3 were received.)

4 MR. VAVRICEK: Without further ado then.

5 (Whereupon, the recording was played.)

6 THE COURT: All right. Any other evidence?

7 MR. VAVRICEK: No other evidence, Your Honor.

8 THE COURT: All right. Mr. McKelvie, do you  
9 have evidence on this issue?

10 MR. MCKELVIE: No, Your Honor.

11 THE COURT: All right. Then let's proceed with  
12 any argument that you wish to make. And both parties  
13 have briefed the law on the guideline issue, but anything  
14 you want to draw my attention to.

15 MR. VAVRICEK: I'll be very brief, Your Honor.  
16 Just to stress that under the plain language of the  
17 guideline, this firearm and magazine clearly qualifies.  
18 It is capable of accepting that magazine. The *Davis*  
19 case, the language upon which the defendant relies, first  
20 and foremost, is dicta. It imagines a possible case in  
21 which the Eighth Circuit might view matters differently.  
22 But that would be the extreme case where inserting the  
23 magazine into the firearm rendered it inoperable. This  
24 was not inoperable. It seems it's undisputed that it  
25 fires, so we believe it operates then. Certainly, it has

1 an issue with the trigger, but no greater issue certainly  
2 than missing a trigger, for example. The agent, as you  
3 can see from the video, is fairly easily able to  
4 manipulate it by pushing it forward. Does that take a  
5 little more time? Yes, than if it worked perfectly. But  
6 to the policy argument that the defendant has raised,  
7 it's not a case -- you know, it's certainly easier than  
8 reloading and going through that process. So we submit  
9 that the guideline clearly applies.

10 I would note, going through this again last night,  
11 that at the scene of the shooting, there was recovered a  
12 16-round magazine. That magazine is also a high-capacity  
13 magazine under the guideline, and that, according to  
14 amended Exhibit 2, did fit in the firearm, and there were  
15 no issues noted in the report. So we believe that the  
16 enhancement here clearly applies. Thank you.

17 THE COURT: Mr. McKelvie.

18 MR. McKELVIE: Thank you, Your Honor. I think  
19 it's a fairly interesting issue, because apparently the  
20 magazine itself is not operating properly, and I don't  
21 think there's -- certainly no factual issue about what's  
22 happening here. One would assume that a person would  
23 want a large-capacity magazine in a semiautomatic weapon  
24 to be able to fire however many rounds that magazine held  
25 without having a malfunction. So apparently, what -- the

1 report seems to indicate that maybe more than one shot  
2 was fired on occasion before the trigger had to be reset,  
3 but on the video that we saw, it had to be reset on each  
4 occasion, and, therefore, we just submit, under *Davis*,  
5 one of the cases cited, which is *United States versus*  
6 *Mullins*, whether a firearm is operable or inoperable is a  
7 question of fact, so I guess that's the situation here,  
8 and we respectfully ask the Court to find that the  
9 large-capacity magazine was inoperable to the extent that  
10 the defendant should not receive a 6-level increase.  
11 Thank you.

12 THE COURT: All right. Then let's go on to  
13 talk about the 4-level increase under Paragraph 22.  
14 Mr. McKelvie does note that, basically, the Eighth  
15 Circuit has already spoken on the issue raised by him, as  
16 to going armed -- or, no, as to carrying weapons. What  
17 about going armed with intent? What are the elements,  
18 and is the government alternatively or also relying on  
19 708.8 of the Iowa Code?

20 MR. VAVRICEK: For purposes of this proceeding,  
21 Your Honor, we would intend to rely solely on *Walker*,  
22 which is squarely governed by the Eighth Circuit. The  
23 one possible issue with going armed with intent is if  
24 Your Honor would be inclined to depart upward because of  
25 the shooting, we would want to avoid any

1 double-counting-type concerns, and clearly there are  
2 three possible harms here: Possessing a firearm as a  
3 prohibited person; violating the carrying weapons statute  
4 by having a loaded weapon in the car; and then firing  
5 those weapons. And so to keep things straight for this  
6 proceeding, we would just rely on the *Walker* case.

7 THE COURT: And in terms of how the government  
8 thinks 724.4 applies, which aspect of that statute are  
9 you relying on and what does the evidence show?

10 MR. VAVRICEK: I apologize, I do not have the  
11 Iowa Code section in front of me --

12 THE COURT: All right.

13 MR. VAVRICEK: -- to indicate which we are  
14 relying on.

15 THE COURT: All right. Well, under Sub 1, it  
16 says "Except as otherwise provided in this section, a  
17 person who goes armed with a dangerous weapon concealed  
18 on or about the person, or who within the city limits of  
19 any city goes armed with a pistol or revolver or any  
20 loaded firearm of any kind, whether concealed or not, or  
21 who knowingly carries or transports in a vehicle a pistol  
22 or revolver commits an aggravated misdemeanor," so I'm  
23 assuming you are relying on the last one?

24 MR. VAVRICEK: Yes, with carrying weapons, yes,  
25 that's correct.

1           THE COURT: So I think that the evidence does  
2 provide the elements that Mr. Pete carried or transported  
3 in a motor vehicle a pistol or revolver, and so I think  
4 that is satisfied.

5           As for the base offense level, the Court finds that  
6 the appropriate base offense level is 20; and for the  
7 reasons articulated by Mr. Vavricek, this is the  
8 appropriate base offense level. Clearly, the magazine  
9 will operate in -- this large-capacity magazine will and  
10 does operate in the firearm at issue, and it does fire.  
11 It doesn't render the firearm inoperable, and so that is  
12 correctly scored. 2 levels for between 3 and 7 firearms.  
13 4 levels for carrying weapons. 2 levels for obstruction  
14 of justice. Gives us an adjusted offense level of 28.

15           The issue of acceptance of responsibility is  
16 generally an issue, where there's obstruction of justice,  
17 so I'll let the parties speak to that; and then we'll  
18 talk about the departure for actually firing the weapon.

19           All right. So, Mr. Vavricek, do you want to talk  
20 about the departure, and then I'll let Mr. McKelvie talk  
21 about acceptance of responsibility and also the  
22 departure, the Court noting that in the normal case,  
23 except if it's an unusual set of circumstances, if you  
24 receive obstruction of justice, you can't get acceptance  
25 of responsibility. And there are exceptions to that.

1 It's not an ironclad rule. It depends on the facts and  
2 circumstances of the case.

3 So, Mr. Vavricek, may I start the conversation with  
4 you, please.

5 MR. VAVRICEK: Yes, thank you, Your Honor. The  
6 government -- as indicated in its brief, the Probation  
7 Office had identified under 5K2.6 a potential upward  
8 departure here. We do argue for an upward departure.  
9 This case is much different than the sort of, to use an  
10 old phrase, mine-run prohibited person in possession of a  
11 firearm case in so far as this defendant went to Spruce  
12 Street and fired this extended-capacity firearm, and  
13 posing a great risk of danger to individuals in the area.  
14 And for that reason, the Court should, to the  
15 extent they're -- I believe his guideline range, even  
16 with acceptance, will come quite close to the statutory  
17 maximum. The Court should sentence this defendant near  
18 or at the statutory maximum for this crime.

19 The guidelines recognize explicitly that a  
20 substantial sentence increase may be appropriate where a  
21 firearm is discharged. And there is a recent case from  
22 this year of *Webster*, where the Court affirmed a maximum  
23 120-month sentence where the defendant not only possessed  
24 the firearm but also discharged it, because the  
25 guidelines simply do not otherwise capture what really



1     happened here.   Thank you.

2                 THE COURT:   Mr. McKelvie.

3                 MR. McKELVIE:   Thank you, Your Honor.   A couple  
4     of things.   First, as far as acceptance of  
5     responsibility, there's a couple of things, I guess.  
6     First off, once the underlying facts were identified,  
7     that created the 2-point upward departure for obstruction  
8     of justice.   Mr. Pete admitted the facts of that case,  
9     and it seems like it would be sort of a policy issue and  
10    also sort of an unfairness to some degree not to then  
11    afford him some benefit, because what we have in the way  
12    of points for somebody pleading is sort of cooperation,  
13    taking some of the burden off the government and the  
14    courts, and a person admitting that what they've done is  
15    wrong and accepting that responsibility.   Your Honor, we  
16    just submit, it's sort of a different issue, and that  
17    because it is, that he should receive the 2 points for  
18    accepting responsibility and for pleading to the charge.  
19    So that's that issue, Your Honor.

20                THE COURT:   All right.

21                MR. McKELVIE:   And then regarding the  
22    government's request for upward departure, again, really,  
23    what we've started out with is a pretty low base level  
24    for a prohibited person in possession of a firearm, and  
25    by virtue of different aspects of the guidelines, keep

1 adding more and more and more things, pretty much because  
2 the person possessed the firearm. And the Court's  
3 already ruled on one of those things. Granted, the  
4 firing of a shot is not a good thing. But we just  
5 respectfully request when the Court takes a look at this  
6 overall situation here, that that upward departure not be  
7 granted and that he be given his cooperation points, Your  
8 Honor.

9 THE COURT: You mean his acceptance points?

10 MR. McKELVIE: That's what I mean, Your Honor.

11 THE COURT: Okay. I just wanted to make sure  
12 we were on the same page. Anything else you want to say  
13 on those guideline issues, Mr. Vavricek?

14 MR. VAVRICEK: With respect to acceptance, he  
15 did plead guilty. He hasn't challenged any of the facts  
16 here. He admitted the obstructive conduct, and if the  
17 Court grants acceptance, we will make the additional  
18 motion.

19 THE COURT: All right. Thank you. Then the  
20 Court will grant a 2-level reduction for acceptance of  
21 responsibility. And the government, then, are you moving  
22 for the third level?

23 MR. VAVRICEK: We do.

24 THE COURT: Then we're left with total offense  
25 level 25. He's criminal history category IV. So the

1 guideline range of imprisonment, before any upward  
2 departures or downward departures or adjustments up or  
3 down, 84 to 105 months, followed by a supervised release  
4 term of 1 to 3 years. Probation is not recommended by  
5 the guideline provisions. The fine, 20,000 to \$200,000.  
6 \$100 in special assessments.

7 With regard to the departure -- and the departure  
8 motion is made under 5K2.0, 5K2.6, with reference to  
9 guideline 2A5.2(b)(1). The Court finds that a 5-level  
10 upward departure is appropriate to total offense level  
11 30, criminal history IV, and that guideline range would  
12 be 135 to 168 months. There is a statutory maximum of  
13 120 months, and so that would be the guideline sentence.

14 The Court has decided that a departure is  
15 appropriate because the aggravating factors present in  
16 this case were not taken into account in computing the  
17 advisory guidelines, specifically, on December the 1st of  
18 2015, Mr. Pete fired shots in the city limits of Dubuque  
19 into an apartment that was occupied by one Robert Scott  
20 and Vanessa Williams. As the story goes, he and  
21 Mr. Scott were feuding. The -- I should say that the  
22 shots ended up penetrating the building. I don't know  
23 where he was aiming because I wasn't there, but the shots  
24 fired penetrated the outer structure of the building. In  
25 fact, one of the rounds lodged in the refrigerator inside

1 the dwelling where Mr. Scott and Ms. Williams were  
2 residing. I don't have from the presentence report what  
3 time of night or day this was, but the occupants, Robert  
4 Scott and Vanessa Williams, were home at the time that  
5 these rounds penetrated their home. The shots fired were  
6 not otherwise taken into account under the advisory  
7 guidelines scoring. This is a very aggravated situation;  
8 but by the grace of God, no one was injured or killed.  
9 Very, very dangerous, intentional conduct. And so the  
10 departure is appropriate, and the guideline sentence now  
11 is 120 months.

12 I would say, just as an aside, that if the Court  
13 erred in computing the advisory guidelines, the Court  
14 would still impose the very same sentence after  
15 consideration of the 3553(a) factors, and I can make a  
16 better record on that at the end here.

17 So, Mr. Vavricek, the guideline sentence is  
18 120 months. Are you asking the Court to impose the  
19 guideline sentence or to go below?

20 MR. VAVRICEK: The government requests a  
21 sentence within the advisory guidelines. We believe that  
22 with the departure, the conduct is adequately accounted  
23 for at the top of the range, which would be consistent --  
24 every case is different, of course. The Court makes an  
25 individualized determination, but consistent with the

1 cases cited in our brief regarding when a prohibited  
2 person has actually discharged a firearm, so, thank you.

3 THE COURT: All right. Mr. McKelvie.

4 MR. MCKELVIE: Thank you, Your Honor. A couple  
5 of things, Your Honor. Mr. Pete acknowledges, and he has  
6 acknowledged to me and others, that he realizes that the  
7 life-style he's leading was very wrong, that there was --  
8 is a dangerous situation, and he's going to try to do  
9 everything he can to rectify the path that he was heading  
10 and go in the right direction. There's not too many  
11 things a person can do to begin with, but one thing that  
12 Mr. Pete has done while in the Linn County Jail is get  
13 his GED. This would have been submitted to the Court  
14 sooner, but it was just handed to me. He told me that he  
15 got it, but it's dated October 27, 2016. I've got it in  
16 my hand, and with the Court's permission, a letter from  
17 the person who administered that, basically saying that  
18 he -- that she's pleased to report that he did complete  
19 it, and that not only did he pass the 5 tests, but he  
20 achieved the college and career readiness designation in  
21 4 of the 5 subjects.

22 He plans to pursue training in a career that will  
23 help him provide for himself and his family in the  
24 future. He has expressed his appreciation many times for  
25 the opportunity provided by the Linn County Correctional

1 Center and Kirkwood Community College to get his diploma  
2 while at the center. So again, there's not much a person  
3 can do except try to go forward, and to the extent that  
4 he can, he's done that.

5 It's -- it's difficult to argue in a case like this  
6 that a person should be given any kind of a break, when  
7 weapons are involved and people are in danger, and so on,  
8 but I just respectfully request the Court, look at the --  
9 the enhancements that have been piled up here, and  
10 consider, because the Court has discretion to do that,  
11 even though I have not filed a motion for downward  
12 variance. I guess I was not confident, I guess, that the  
13 Court would go up to the 120-month sentence, but  
14 respectfully request that the Court impose the 84-month  
15 sentence in this case. Thank you, Your Honor.

16 THE COURT: Mr. Pete, this is the time in the  
17 proceeding when you have a chance to speak. You don't  
18 have to say anything unless you want to.

19 THE DEFENDANT: I just want to apologize to the  
20 Court and to my family for my conduct. I realize I was  
21 living a criminal life-style. I've had time to think  
22 about that, and I'm going to change for the better. I've  
23 thought about what I can do to get started with that, and  
24 that was to go ahead and receive my GED, which I just  
25 received at the Linn County Jail. I intend to keep

1 improving myself and avoid any criminal conduct in the  
2 future, so I never have to leave my daughters and my  
3 family again. Thank you for listening, Your Honor.

4 THE COURT: Thank you. The Court then is ready  
5 to make its findings. In arriving at a disposition, I  
6 have carefully considered each and every factor under 18  
7 United States Code Section 3553(a). I have computed the  
8 advisory guidelines. In spite of obstruction of justice,  
9 I did impose acceptance of responsibility at the maximum  
10 level, and the government did not disagree with that  
11 substantially. It is a rare case where you can score  
12 both of them under the advisory guidelines.

13 The nature and circumstances of the offense are  
14 really not at issue, and so the Court won't spend a lot  
15 of time on them. Of concern here is early on, the  
16 defendant attempted to get two females to provide false  
17 testimony before the grand jury, and that was the basis  
18 of the obstruction of justice. The criminal justice  
19 system depends on people, like these two women who were  
20 approached to lie, not lying and telling the truth,  
21 otherwise the whole system breaks down, and they are to  
22 be commended for being able to withstand the pressure and  
23 not come forward and lie.

24 Mr. Pete is 24. Probation says he's engaged to be  
25 married. He has two children. His upbringing is

1 detailed in the presentence investigation report.  
2 Although he did not live with a full family and his  
3 father was not in the picture, he did have a positive  
4 relationship with his mom. Sadly, when I read Mr. Pete's  
5 background, it sounds like he was a high school athlete  
6 that was doing quite well, but when he dropped out of  
7 school, it seems to me that things really went downhill.  
8 Didn't like school, dropped out, and after that, not  
9 positive results.

10 Minimal employment history. He's a confirmed member  
11 of the Gangster Disciples street gang. He has a serious  
12 alcohol problem. He does admit his alcohol problem, and  
13 apparently his fiancée has reinforced with him that this  
14 is something that has to be changed. He also has a  
15 marijuana issue. He did try substance abuse treatment.  
16 That ended unsuccessfully. That is of concern. The  
17 Court is hopeful that with additional encouragement and  
18 attempts, that Mr. Pete will take advantage of the  
19 assistance that is available to him to give up his  
20 substance problems.

21 The criminal history is also concerning,  
22 particularly, operating while intoxicated. And the  
23 Court, obviously, is concerned about that because of the  
24 risk to public safety, just like I -- I'm very concerned  
25 about his criminal conduct in Dubuque, shooting in that



1 residential neighborhood and having the shots lodged in  
2 Mr. Scott's and Ms. Williams' home. He has prior poor  
3 performance on supervision.

4       The Court is aware that the sentence I impose today  
5 has to reflect the seriousness of the offense -- this is  
6 clearly a very serious crime -- promote respect for the  
7 law, be a just punishment, be a deterrent in general to  
8 criminal conduct and to the defendant, and protect the  
9 public from further crimes of the defendant. The  
10 sentence has to provide the defendant with needed  
11 education, vocational training, medical care, or other  
12 correctional treatment in the most effective manner.

13       And, of course, the sentence I impose has to avoid  
14 unwarranted sentence disparities among defendants with  
15 similar records found guilty of similar conduct. In that  
16 connection, I studied this case along with that of  
17 Nathanson-Love and Shaw to make sure that, as I was going  
18 through these, I was being fair and not creating any  
19 unwarranted disparities. And, of course, the advisory  
20 guidelines are of great assistance to courts in trying to  
21 avoid that pitfall of sentencing. I considered here  
22 whether a sentence below the guideline of 120 months  
23 would be appropriate. I weighed the mitigating factors.  
24 I weighed the aggravating factors. I considered the  
25 arguments made by the lawyers and the statements made by

1 Mr. Pete, and I find no basis to vary downward from the  
2 advisory guideline range. I'm very hopeful that Mr. Pete  
3 will use this opportunity to make the changes that he  
4 says he wants to make.

5 So it is the judgment of the Court that Camron  
6 Andrew Pete, Jr., is hereby committed to the custody of  
7 the Bureau of Prisons to serve 120 months. There is a  
8 pending case in Dubuque, and I order that the term of  
9 imprisonment for this offense be ordered to run  
10 concurrently with any term of imprisonment that may be  
11 imposed in the future in the Iowa District Court for  
12 Dubuque County, Case FECR117729, consistent with  
13 guideline 5G1.3(c). The under -- or the state case is  
14 basically based on the same facts.

15 In terms of recommendations to the Bureau of  
16 Prisons, I recommend that Mr. Pete be designated to a  
17 Bureau of Prisons' facility in close proximity to his  
18 family, commensurate with his security and custody  
19 classification needs. I recommend that he participate in  
20 the Bureau of Prisons' 500-hour Comprehensive Residential  
21 Drug Abuse Treatment Program or an alternate substance  
22 abuse treatment program. He has some other Dubuque  
23 County cases that aren't connected. Pursuant to 18  
24 United States Code Section 3584, I recommend the sentence  
25 for this offense be ordered to run consecutively or back

1 to back with any term of imprisonment that may be imposed  
2 in the Iowa District Court for Dubuque County, cases  
3 SMCR117745, SMCR117744, SMCR116778, and SMCR116777.

4 Mr. Pete, when you get out of prison, you'll be on  
5 supervised release for 3 years. Within 72 hours of  
6 release from custody of the Bureau of Prisons, you must  
7 report in person to the Probation Office in the district  
8 to which you are released. While you are on supervised  
9 release, you must comply with the standard conditions of  
10 supervision set out in the judgment order.

11 In addition, you must not commit any federal, state,  
12 or local crimes. You must not illegally possess a  
13 controlled substance. You must not possess a firearm,  
14 ammunition, a destructive device or any dangerous weapon.  
15 You must cooperate in the collection of a DNA sample.

16 Just a reminder, you are now a convicted felon. One  
17 of the things that means is it's against the law, federal  
18 and state, for you to possess for any reason a firearm or  
19 ammunition. Frankly, with this in your background, if  
20 you are in possession of a firearm or ammunition in the  
21 future, prosecuted, convicted, come up for sentencing,  
22 you will receive a very substantial sentence. So the  
23 best thing for you to do is to have nothing whatsoever to  
24 do with firearms or ammunition.

25 While you are on supervised release, you must comply

1 with all of the special conditions set forth in the  
2 special conditions of supervision section of the  
3 presentence report, Paragraphs 84 through 90. Those  
4 weren't objected to, and they are incorporated by this  
5 reference. They're ordered by the Court, and they will  
6 be implemented by Probation.

7 No fine is imposed. I order that you pay a \$100  
8 special assessment.

9 You are immediately remanded to the custody of the  
10 United States Marshal. There are no counts to be  
11 dismissed.

12 Mr. Pete, I'm now going to talk to you about your  
13 rights to appeal. If you disagree with this judgment and  
14 commitment, you have a right to appeal. Your appeal  
15 would go to the Eighth Circuit Court of Appeals. Here's  
16 how you appeal. You have to file a written notice of  
17 appeal with the Clerk of Court here in the United States  
18 District Court for the Northern District of Iowa at  
19 Cedar Rapids, Iowa. If you do not file a written notice  
20 of appeal within the next 14 days, you forever give up  
21 your right to challenge this judgment and sentence. If  
22 you would like to appeal and you cannot afford the  
23 services of an attorney, the Court will appoint an  
24 attorney to represent you on appeal.

25 I will receipt back the Exhibit 1 to Dubuque or to

1 the US Attorney.

2 Anything else, Mr. Vavricek?

3 MR. VAVRICEK: No, Your Honor.

4 THE COURT: Anything else, Mr. McKelvie?

5 MR. McKELVIE: No, Your Honor.

6 THE COURT: Mr. Pete, did you understand  
7 everything I talked about?

8 THE DEFENDANT: Yeah.

9 THE COURT: Good luck to you. This concludes  
10 the hearing.

11 (Proceedings concluded at 2:12 p.m.)  
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## C E R T I F I C A T E

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a hearing was held before the Honorable Linda R. Reade; that I reported in shorthand the proceedings of said hearing, reduced the same to print to the best of my ability by means of computer-assisted transcription under my direction and supervision, and that the foregoing transcript is a true record of all proceedings had on the taking of said hearing at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 20th day of December, 2016.

/s/ Patrice A. Murray

Patrice A. Murray, CSR, RPR, RMR, FCRR  
United States District Court, NDIA  
111 Seventh Avenue S.E., Box 4  
Cedar Rapids, Iowa 52401-2101

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